IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF APPEALS

In re Patent Application of: McCARTHY ET AL.	
Serial No. 10/779,402	Examiner: M. NGUYEN
Confirmation No. 2799	Art Unit: 2442
Filing Date: FEBRUARY 13, 2004	Attorney Docket No. ID-504 (80226)
For: COMMUNICATIONS SYSTEM SERVER LOAD BALANCING BASED UPON WEIGHTED HEALTH METRICS AND RELATED METHODS	

APPELLANT'S REPLY BRIEF

EFILE Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Herewith is Appellant's Reply Brief that is submitted in reply to the Examiner's Answer and in furtherance to Appellant's Appeal Brief. If any additional extensions and/or fees are required, authorization is given to charge Deposit Account No. 01-0484.

REMARKS

The Examiner rejected independent Claims 1, 9, 14, and 17 over the combination of Albert and Dar. Albert is directed to a system and method for selecting a server to handle a connection. The method includes receiving at a service manager a connection request intercepted by a network device having a forwarding agent that is operative to receive instructions from a service manager, the connection request having been forwarded from the forwarding agent on the network device to the service manager.

A preferred server is selected at the service manager from among a group of available servers. The preferred server is the server that is to service the connection request. Instructions are sent from the service manager to the forwarding agent. The instructions include the preferred server that is to service the connection request so that the connection request may be forwarded from the network device to the preferred server. The servers send feedback messages to the service manager. The service manager uses these feedback messages to perform load balancing.

Dar discloses a communications system including a switch, clients, a network, and servers. The switch performs typical routing functions such as network address translation from virtual addresses to actual addresses, routing of packets, and using access control lists. The switch also monitors the health of the servers by monitoring and aggregating metrics indicative of the health. The metrics include processor, memory, and input/output metrics. This monitoring can be periodic.

In the Appeal Brief, Applicant argued that the combination of Albert and Dar fails to disclose a dispatcher for collecting the commonly scaled weighted health metrics from the servers by polling the servers for the weighted health metrics and distributing jobs to the servers based thereon, as recited in independent Claim 1, for example. In the Examiner's Answer, the Examiner has now newly asserted that Albert's service manager's storage of feedback messages (received from real machines without prompting the real machines) in a data structure, and subsequent retrieval of those feedback messages, somehow discloses collecting the commonly scaled weighted health metrics from the servers by polling the servers. It is respectfully submitted that this interpretation of Albert is flawed.

As acknowledged by the Examiner, the service manager of Albert (asserted to disclose the dispatcher of independent Claim 1) receives feedback messages from the real machines of Albert (asserted to disclose the servers of independent Claim 1), without prompting the real machines for the feedback messages. This is not polling, because as understood by those of skill in the art, a service manager polling a server for data would mean that the service manager repeatedly asks the server for the data, and the server sends the data in response when it has the data to send, and here the real machines send their feedback messages to the service manager without any prompt therefrom.

Recognizing that this teaching of Albert fails to disclose collecting the commonly scaled weighted health metrics

from the servers by polling the servers, as recited in independent Claim 1, the Examiner asserts col. 32, lines 14-40 of Albert to somehow disclose polling. This cited portion explains that the service manager stores the received feedback messages in a database, and then retrieves them from the database when desired. The Examiner takes the erroneous position that since these feedback messages originally came from the real machines, the retrieval of them from a database at a later point in time discloses collecting the commonly scaled weighted health metrics from the servers by polling the servers.

This is not true. The servers were never polled. As such, even if it can be argued that the database was polled, the real machines were never polled. As such, the feedback messages were not collected from the real machines by polling the real machines. Consequently, Albert (and therefore the combination of Albert and Dar) does not and can not disclose a dispatcher for collecting the commonly scaled weighted health metrics from the servers by polling the servers for the weighted health metrics and distributing jobs to the servers based thereon, as recited in independent Claim 1.

As such, independent Claim 1 is therefore patentable over the combination of Albert and Dar. Independent Claims 9, 14, and 17 contain similar recitations, and are patentable over the combination of Albert and Dar for the same reasons. The dependent claims, which recite yet further distinguishing features, are likewise patentable and require no further discussion herein.

Respectfully submitted,

JEREMY B. BERMAN, ESQ.
Reg. No. 60,582
Allen, Dyer, Doppelt, Milbrath & Gilchrist, P.A.
255 S. Orange Avenue, Suite 1401
Post Office Box 3791
Orlando, Florida 32802
407-841-2330
Attorney for Appellant